

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

ENTERED

APR 24 2003

U.S. BANKRUPTCY COURT
MDNC - KWC

IN RE:

Jonathan Joseph Dutton,

Debtor.

Case No. 03-80304-C7

ORDER

This case came before the court on April 10, 2003, for hearing upon the Objection by Trustee to the Debtor's claim for property exemptions. Travis Sasser appeared on behalf of the Debtor and Stephanie Osborne-Rogers appeared on behalf of the Trustee. Having considered the claim, the objection and the other matters of record, and having hearing the arguments of counsel, the court finds and concludes as follows:

FACTS

1. This Chapter 7 case was filed on January 27, 2003.
2. On January 27, 2003, Debtor filed a Claim for Property Exemptions in which he claimed as exempt property the sum of \$5,000.00 on deposit in a checking account at BB&T. This exemption was claimed pursuant to G.S. § 1-362 as being earnings from personal services, earned within 60 days preceding bankruptcy, and necessary for the support of a family.
3. On March 5, 2003, the Trustee timely filed an Objection to Debtor's Claim for Property Exemptions, specifically objecting to Debtor's claim to a \$5,000.00 exemption under G.S. § 1-362.

LEGAL ANALYSIS

4. In order to properly exempt cash pursuant to G.S. § 1-362,¹ the Debtor must show that the cash: (a) was earned from personal services; (b) was earned within 60 days preceding bankruptcy; and (c) is necessary for the support of a family. This provision, as with exemptions in general, should be liberally construed in favor of the exemption. See In re Laues, 90 B.R. 158, 161 (Bankr. E.D.N.C. 1988) (citing Elmwood v. Elmwood, 295 N.C. 168, 185, 244 S.E.2d 668 (1978)). Nevertheless, the bare allegation by a debtor that property is necessary to support his family is insufficient to support a claim for an exemption under G.S. § 1-362. See Sturgill v. Sturgill, 49 N.C. App. 580, 586, 272 S.E.2d 423, 428 (1980). The debtor is "required under G.S. 1-362 to state sufficient facts . . . to allow the trial judge to determine that the exemption was necessary." Id.

5. Even if it is assumed, as argued by the Debtor, that he, alone, constitutes a "family" for purposes of the statute, Debtor

¹G.S. § 1-362 reads as follows:

The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and personal property exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within 60 days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor.

nonetheless is not entitled to exempt the \$5,000.00 at issue pursuant to G.S. § 1-362. Although the record reflects that the \$5,000.00 was in Debtor's checking account when this case was filed, there was no evidence regarding the source of the funds. Further, even if it is further assumed that the \$5,000.00 came from the Debtor's earnings, there was no showing that the \$5,000.00 sought to be exempted was earned within 60 days preceding bankruptcy. Finally, it does not appear that the \$5,000.00 in the BB&T account is necessary for the support of a family, i.e., the Debtor. The record reflects that the Debtor, a single male with a gross monthly salary of \$16,666.67, take-home pay of \$7,689.90 per month, monthly expenses of \$6,364.00 and no dependents, has the financial capacity to support himself from current earnings without resort to additional cash pursuant to G.S. § 1-362. Further evidence that the claimed funds are not necessary for the Debtor's support is that when this case was filed he was continuing to contribute the sum of \$1,000.00 per month to his retirement, which at the time of filing included \$666,597.27 in a 401(k) account, \$43,866.76 in a 403(b) account and \$13,177.72 in an IRA. Accordingly, the Debtor's Claim for Property Exemptions must be denied to the extent Debtor seeks to claim any amount of money as exempt pursuant to G.S. § 1-362.

It is therefore ORDERED that the Trustee's Objection to Debtor's Claim for Property Exemption is sustained and Debtor's claim for exemption pursuant to G.S. § 1-362 is disallowed.

This 22 day of April, 2003.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge